



# CALIFORNIA FARM BUREAU FEDERATION

NATURAL RESOURCES AND ENVIRONMENTAL DIVISION

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**Via Electronic Mail and Federal Express**

May 18, 2006

Mr. Robert H. Schneider, Chairman  
Central Valley Regional Water Quality Control Board  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, California 95670-6114

**RE: AGENDA ITEM \_\_\_, *CONSIDERATION OF RESOLUTION RENEWING CONDITIONAL WAIVERS OF WASTE DISCHARGE REQUIREMENTS FOR DISCHARGES FROM IRRIGATED LANDS***

Dear Mr. Schneider:

The California Farm Bureau Federation ("Farm Bureau") hereby submits the following comments and attachments to the agenda item addressing *Consideration of Resolution Renewing Conditional Waivers of Waste Discharge Requirements for Discharges From Irrigated Lands* ("Waiver Renewal"). In addition Farm Bureau incorporates by reference the written comments submitted by the Agricultural Coalition and the Watershed Water Quality Coalitions.

In November of 2005 the RWQCB extended the existing waiver for a period of six months to enable staff and stakeholders to work together, specifically focusing on: the membership issue, who is and who is not a discharger, and on accountability. With an infusion of leadership from this Board's executive office and tireless effort from stakeholders and staff, Farm Bureau believes that this Board's directive has been satisfied in principal with a mutually acceptable solution. In fact, with a few modifications as detailed in the attachments hereto, Farm Bureau believes that the Waiver Renewal provides a satisfactory interim regulatory framework to facilitate the implementation of management practices, and the collection and dissemination of information necessary to protect and improve water quality during the development of a long-term regulatory strategy.

As such, Farm Bureau respectfully requests the RWQCB to adopt the Waiver Renewal with the inclusion of the changes detailed in the following attachments. If there are any questions regarding this matter, please feel free to contact me either by telephone at (916) 561-5614, or by electronic mail at [jhewitt@cfbf.com](mailto:jhewitt@cfbf.com).

Sincerely,

A handwritten signature in black ink, appearing to read "John Hewitt".

John Hewitt, Esq.

JH:pkh

cc: Tam Doduc, Chair, State Water Resources Control Board

## **Attachment 1: Farm Bureau Comments to the Waiver Renewal**

**\*\*The following comments, while referencing the Coalition Group Conditional Waiver and associated attachments, are equally applicable, and hereby incorporated by reference, to the Individual Waiver and its associated attachments. Comment specifically to the Individual Waiver was not provided in an attempt to eliminate duplicative arguments.**

### **WAIVER RENEWAL SCOPE**

The Conditional Waiver does not cover dischargers of waste from irrigated lands used for gardens, vineyards, small orchards, small pastures, and small greenhouses that are used for the purpose of producing crops and/or animals for personal consumption or use, and the product or service is not sold commercially. Owners and operators of irrigated lands described in this finding are not required to submit a RWD or obtain WDRs.

Finding 45 at Page 10. Emphasis Added.

Without further explanation, the exclusion described above is problematic because Farm Bureau believes that the RWQCB has effectively waived the requirements of §13260 of the Water Code without undertaking the proper procedural steps. This is also troubling because, in effect, the RWQCB has articulated its regulatory and enforcement priorities in such a manner that may compromise water quality. In fact, this proclamation is analogous to the Highway Patrol announcing that it will not ticket white Fords that do not have valid registration. While these discharges (or white Fords) may be a low enforcement priority, they are certainly not immune from complying with the law.

To the extent the RWQCB believes that these discharges have not, and do not belong under this regulatory program because they are a lower threat to water quality or, that the return on their regulatory investment will not be maximized, that is permissible, and wholly within their discretion. In fact, we believe that regulatory and enforcement priorities are necessary in any effective program and a more concerted effort in this area would greatly enhance the Irrigated Lands Program.

In order to rectify the problem with the proposed language, Farm Bureau would suggest amending finding 45 to read:

The Conditional Waiver is not intended to cover dischargers of waste from irrigated lands used for gardens, vineyards, small orchards, small pastures, and small greenhouses that are used for the purpose of producing crops and/or animals for personal consumption or use, and the product or service is not sold commercially. Owners and operators of irrigated lands described in this finding are required to follow all appropriate laws and regulations.

## ECONOMIC IMPACT

The Waiver Renewal should incorporate an evaluation of the costs associated with, or related to, complying with its regulatory requirements. Compliance with the Waiver Renewal has direct and indirect costs that should be evaluated and disclosed on the record for public consideration and so the RWQCB can make a more informed decision. In addition to the costs of the various technical reports, the costs of conducting water quality monitoring and preparing the various reports set forth in the Monitoring and Reporting Program must also be evaluated.

Both the Los Angeles and Central Coast Regional Water Quality Control Boards conducted an economic analysis of their proposed waiver programs (see Attachment 2A and 2B) and these analyses should serve as a basis for the Central Valley RWQCB. In addition, the Regional Board has or can easily obtain nearly two years of cost data from Coalition Groups and Individual Dischargers. A cursory inquiry with four Coalition Groups revealed compliance costs for 2005 as approximately \$310,150, \$389,895, \$502,000, and \$873,557 respectfully.<sup>1</sup> If extrapolated across the entire Central Valley these compliance costs would further illustrate the need for this data in helping to properly ascertain the feasibility of implementing the proposed regulatory requirement and ensuring that the program's requirements are reasonable.

## WATER QUALITY STANDARDS

The Waiver Renewal in at least two distinct locations states that the **“specific numeric levels to comply with the applicable water quality standards in receiving waters will be set forth in the Monitoring and Reporting Program.”**<sup>2</sup> Farm Bureau asserts that this language and any applicable references must be removed from the Waiver Renewal because it will impose standards based on water quality objectives that were not adopted in conformance with the requirements of the Water Code (see §13241), result in violations of the administrative procedures act, and result in an impermissible delegation of RWQCB authority (see §13223). Furthermore, removal of this language would be permissible and protective of water quality because the RWQCB has already clearly articulated the individual dischargers obligation under the waiver is to, “comply with applicable water quality standards, protect beneficial uses, and prevent nuisance...”<sup>3</sup> and has an established process by which to evaluate compliance.<sup>4</sup>

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<sup>1</sup> These figures are limited to Coalition Group implementation (principally monitoring), are exclusive of the costs associated with implementing management practices, and does not include the costs incurred to date to develop and receive RWQCB approval for various Waiver components (e.g. Monitoring and Reporting Program, Quality Assurance Plan, Watershed Assessment, etc.) Farm Bureau maintains that all of these costs should be estimated and analyzed by the RWQCB.

<sup>2</sup> See Tentative Attachment A Page 1 and Attachment B section C.1. Page 6. Emphasis Added.

<sup>3</sup> Finding 23 Coalition Group Conditional Waiver Page 5

<sup>4</sup> “Where numerical water quality objectives are listed, these are the limits necessary for the reasonable protection of beneficial uses of the water.[] Where compliance with narrative objectives is required... the Regional Water Board will, on a case-by case basis, adopt numerical limitations in orders which will implement narrative objectives.” Basin Plan at IV-17

### Violation of Water Code Section 13241

As currently required, Coalition Groups would, in some instances, have to assign beneficial uses for the first time to a waterway and in others, translate narrative water quality objectives into numeric limits. Having itself never formally “designated” beneficial uses for a majority of the waterways in question, it seems wholly inappropriate to have Coalition Groups assume the RWQCB’s role and complete the Basin Plan where it did not establish water quality objectives for waterways such as constructed conveyances and drains. Indeed, this shortcoming in the existing waiver program has previously been acknowledged: “Factors to be considered in establishing WQOs must include the ‘past, present, and probable future beneficial uses of water.’ Without the benefit of beneficial use assessments, it is unclear whether the Board has established WQOs -- ***or how it properly could have established WQOs*** -- for many of the agricultural channels that receive discharges from irrigated lands.”<sup>5</sup> For this reason, and those detailed below, this requirement must be removed.

### Violation of the Administrative Procedures Act

The Regional Board cannot simply “impose” water quality standards or require their promulgation by Coalition Groups by adopting a Conditional Waiver. It must go through the appropriate administrative process, which would include an affirmative determination of the *appropriate* and *reasonably achievable* beneficial uses of these waterbodies, and a determination of the water quality objectives *reasonably* necessary to protect those beneficial uses. In fact, Farm Bureau has encouraged the RWQCB throughout several Triennial Review processes to undertake this task. Actually knowing what beneficial uses are to be protected is the fundamental first step in protecting and enhancing water quality. The magnitude of this endeavor and its process is fully articulated in the respective Federal and State laws and regulations and should not be circumvented.

### Impermissible Delegation of Authority

The Legislature in Water Code Section 13223 expressly prohibits the RWQCB from delegating “the issuance, modification, or revocation of any water quality control plan, [and] water quality objective...” to its Executive Officer and presumably the public. However, as constructed, the Waiver Renewal would violate this restriction in requiring the development of specific numeric levels in the Monitoring and Reporting Program that is subject to the exclusive approval by the Executive Officer. For this reason, and those stated previously, the requirement to develop and insert numeric water quality standards into the Monitoring and Reporting Programs must be removed.

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<sup>5</sup> *DeltaKeeper, et al. v. California Regional Water Quality Resources Control Board for the Central Valley Region, et al.* (Super. Ct. Sacramento County, 2005, No. 04CS00235), Page 49, emphasis added.

## MISCELLANEOUS

In addition to those comments above, Farm Bureau believes the following editorial changes or explanations should be incorporated into the Waiver Renewal.

### Coalition Group Conditional Waiver

#### Finding 7-

The reference to “depth of groundwater” should be eliminated because this program does not purport to cover discharges to groundwater.

#### Finding 27-

“[A]dditional conditions are required to protect water quality”, simply stated, why? The RWQCB has previously stated that changes to the program are necessary to reflect changes in the Water Code. Is this the exclusive reason?

#### Finding 40-

The use of the limiting description, “private lands”, would suggest that the Conditional Waiver might regulate water in agricultural fields contained on public lands. Is the intent of the program?

As currently stated, the last sentence of this finding suggests the RWQCB would have regulatory jurisdiction over the lawful application crop protection tools such as herbicides and pesticides. The regulation of this otherwise lawful activity is outside the authority of the RWQCB and regulated by other federal, state, and local agencies. As such, Farm Bureau contends the sentence should be amended to read as follows: “The Conditional Waiver is not intended to address the lawful application of soil amendments, fertilizers, or pesticides.”

### Tentative Attachment A

#### Definition 2.

For clarity, the definition of a “Discharger” should more closely follow those persons required to file a report of waste discharge under §13260 of the Water Code and therefore should read: “Discharger – The owner and/or operator of irrigated lands that discharge or have the potential to discharge waste that could affect the quality of the water of the state.”

## CONCLUSION

For the forgoing reasons, Farm Bureau believes the Waiver Renewal’s scope should be amended, an economic analysis included, the requirements to develop numeric water quality standards within the Monitoring and Reporting Program should be removed, and make miscellaneous changes made

## **ATTACHMENT 2**

### **Economic Cost Studies from the Los Angeles and Central Coast RWQCBs**

## **ATTACHMENT 3**

### **Emails**

## **Attachment 4**

### **Various articles**